IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 16707 of 2007(L)

CMA.5/2005 of MACT, IRINJALAKUDA
OS.2166/2000 of II ADDL.M.C.,THRISSUR

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PETITIONER:

C.V.BABURAJ, S/O.CHIRAKANDATH VIJAYAN,
MANALOOR AMSOM DESOM, TRISSUR DISTRICT.

BY ADV. SMT.LATHA PRABHAKARAN
SRI.K.M.JAMALUDHEEN

RESPONDENTS:

MAHASUDARSAN CORPORATION CHITS &
FINANCE, GURUVAYOOR AMSOM DESOM, CHAVAKKAD TALUK,
REPRESENTED BY RECEIVER, C.K.KUNJIPORINCHU,
ADVOCATE, ADVOCATE RECEIVER OFFICE, OVUNGAL,
CHAVAKKAD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.16707 OF 2007

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Dated this the 1st day of June, 2007

JUDGMENT

This writ petition is filed against the common order of the District Court, Thrissur in C.M.A.No.5 of 2005. The first defendant in the suit is the writ petitioner. The plaintiff had instituted a suit for realisation of the amount and the suit was decreed ex parte. Thereafter the decree holder filed E.P.No.42 of 2003 and 1 ½ years thereafter an application was filed to set aside the ex parte decree with a petition to condone the delay of 3 ½ years. Both the courts below did not find in favour of the writ petitioner and therefore dismissed the applications. It is against that decision the present writ petition is filed.

2. It is revealed from the order of the appellate court that the suit was instituted against the husband and wife and when the process server went to serve notice on them, they were absent and therefore it was tendered to the mother who was residing along with them. When she refused to receive summons then the process server affixed the notice in front of the house and fileD a report under Order V Rule 17 of the C.P.C. There is no case for the

writ petitioner that thereafter he has not resided in the house where notice was affixed. So the contention of the writ petitioner that the petitioner was not aware of the suit cannot be accepted and it has been held so by both the courts below.

3. The next point to be considered is regarding the laches of the petitioner after filing of the E.P.. The E.P. was instituted in the year 2003 and admittedly the writ petitioner had received notice. But he would say it was received through a friend. But the friend did not deliver the notice in time. The present petition is filed 1 ½ years after the service of said notice in the E.P. So, it can be very safely held that the petitioner was not at all careful or vigilant in prosecuting the matter. The petitioner did not even mount the box to give any evidence in support of his contentions. So, it has to be held that the appreciation of evidence by the trial court is not vitiated under law. I am fully aware of the fact that the brooding principles of natural justice demands that as far as possible the court should try to dispose of the matter on merits. But when it is proved that the petitioner and his wife are grossly negligent and guilty of grave misconduct in the prosecution of the proceedings, such a beneficial thing cannot be granted to him. This is a classical case where there is absolute evidence to establish that the parties are grossly negligent and guilty of grave misconduct and

therefore an opportunity cannot be granted. It is also settled principle that a winning party should not be put in the place of a loosing party when there are no grounds to set aside the ex parte decree.

From the materials available, I find that the courts below were right in dismissing the condonation application as well as the application for setting aside the ex parte decree. Writ petition lacks merit and the same is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-